IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 44 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HARIJAN MADHA WALA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR SV PARMAR for Applicant(s) : 1,
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
DELETED for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/02/2007

ORAL JUDGMENT

1. This petition has come up for hearing and final disposal after being dismissed for default twice during its pendency for over 10 years and it was

extensively argued by learned counsel, Mr S.V. Parmar.

2. The petitioner is stated to be a member of backward class and a landless labourer who earned his livelihood by honest means of labour and, having been settled in a family, he was aggrieved by the impugned order dated 27.7.1995 of his externment for six months. Admittedly, that order was carried in appeal before Dy.Secretary and the appeal was also dismissed by order dated 21.12.1995.

3. Learned counsel for the petitioner vehemently argued that provisions of section 56 of the Bombay Police Act, 1951 did not apply to the facts of the case and the findings recorded in the impugned order by the competent authority were perverse insofar as they were not supported by the material or facts on record. He further submitted that the impugned order was made in *mala fide* exercise of power which was apparent from the concluding remarks, made in the impugned order, to the effect that witnesses of the petitioner were not reliable, that he was earning his

livelihood by labour and he belongs to a backward class, considering which he had to be externed. He further submitted that the statements and allegations against the petitioner were vague and they could not have been pressed into service for violating the fundamental rights of a citizen enshrined in Article 21 of the Constitution. The learned counsel relied upon the judgments of the Supreme Court in ***Prem Chand v. Union of India & Ors. (1981) 1 SCC 639*** and in ***Smt. Bimla Dewan v. Lieutenant-Governor of Delhi (1982) 2 SCC 469*** in support of his submissions that, mere police apprehension, in absence of a clear and present danger based upon credible material, would not be enough to proceed against a person; and that individual actions which did not disturb the even tempo of life in the society or does not cause apprehension in the minds of the residents in regard to maintenance of public order, cannot amount to interference with the maintenance of public order.

4. Learned APP pointed out from the impugned order that it was made after giving to the petitioner an opportunity of being heard and lead evidence in his

favour and after considering the relevant material brought before the authority. He further submitted that a reasonable view was taken on the basis of the record of several offences registered against the petitioner and the statements which were recorded by the police department. He submitted that on the basis of such relevant materials, the competent authority had recorded the finding that the petitioner had indulged in anti-social activities and threatened innocent members of the public, due to which citizens were not coming forward to file complaints. It was, on that basis, found to be necessary that effective preventive actions were taken. The learned APP relied upon Division Bench judgment of this Court in ***Vijabir @ Abbal Dada Devisinh Rajput v. K.S. Shethi, Police Supdt., Ahmedabad & Ors (1986 GLH 605)*** to submit that subjective satisfaction recorded by the competent authority cannot be interfered with in exercise of writ jurisdiction of the High Court and upon the judgment in ***Abedin Rasul Bombaywala v. Commissioner of Police, Surat & Anr. (1986 GLH 986)*** to submit that clear averments regarding the activities indulged in

by the petitioner should be sufficient not to attract vice of vagueness.

5. Having regard to the facts and circumstances described in the impugned order including the series of allegations made and the incidents narrated in the list of charges and the existence of material indicated in the impugned order, it can neither be said that the allegations against the petitioner were vague nor that there was no material to arrive at the satisfaction required to be reached for exercising the power under section 56 of the Bombay Police Act, 1951. Apparently, if it appeared to the competent authority that the movements of the petitioner were causing alarm, danger or harm to any person or that the witnesses were not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards safety of their person, the authority concerned was authorised to make appropriate order as was deemed necessary, in order to prevent violence and to remove him outside the specified area. As held by the Division Bench of this Court in the aforesaid judgments, if the

subjective satisfaction were arrived at by the externing authority on proper materials and there were no vitiating circumstances to set aside the order, this Court ought not to interfere with the discretion exercised by the authority. There is no material to substantiate the argument that the impugned order was in any way *mala fide* or actuated by any irrelevant consideration. The observations contained in the concluding part of the impugned order that the petitioner was earning his livelihood by labour and belonged to backward class, have to be read in the context and in light of the previous observations regarding the record of offences and the statements registered and recorded against the petitioner.

6. Admittedly, the impugned order has already lived its life many years ago and the petition was pressed only for the declaration that the impugned orders were illegal and for the consequential relief of compensation, if the petitioner were entitled to it. However, in view of the aforesaid facts and circumstances and the legal position, this Court

would not be justified in interfering with the impugned order in exercise of its extraordinary writ jurisdiction and since the impugned orders are upheld, no order of compensation could be justified. Therefore, the petition is dismissed and Rule is discharged with no order as to costs.

[D. H. Waghela, J.]

msp